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In The

Supreme Court of the United States

BOY SCOUTS OF AMERICA AND MONMOUTH COUNCIL, BOY SCOUTS OF AMERICA,
Petitioners,

v.

JAMES DALE,
Respondent.

On Writ of Certiorari to the Supreme Court of New Jersey

BRIEF OF *AMICUS CURIAE* AMERICAN PSYCHOLOGICAL ASSOCIATION IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1/]

The American Psychological Association ("APA"), a voluntary, nonprofit, scientific and professional organization founded in 1892, is the major association of psychologists in the United States, with more than 155,000 members and affiliates. Among the APA's major purposes is to increase and disseminate knowledge regarding human behavior, and to foster the application of psychological learning to important human concerns. Issues at the heart of this case – prejudice, sexual orientation, child development – have been the subject of significant research by psychologists.

The APA submits this brief to present relevant scientific knowledge[2/] that provides a context for this Court's review of whether the Boy Scouts's policy of excluding gay youths and adults survives state law aimed at reducing prejudice and discrimination against homosexuals. The APA has urged elimination of discrimination against gay, lesbian and bisexual people, and adopted resolutions recognizing the "profound psychological consequences" of "hate crimes" motivated by anti-gay prejudice, urging governmental action to reduce such bias-related crimes and to eliminate "policies that perpetuate them,"[3/] and declaring that discrimination against gay people "is detrimental to mental health and the public good."[4/]

1/ Letters of consent have been filed with the Clerk. No party authored this brief in whole or part and no one, other than *amicus*, its members, or its counsel contributed to the preparation or submission of this brief.

2/ Research cited in this brief includes data from studies conducted using the scientific method. Such research typically is subject to critical review by outside experts, usually during the peer review process preceding publication in a scholarly journal.

3/ American Psychological Association, *Minutes of Annual Meeting of the Council of Representatives*, 43 Am. Psychologist 527, 528 (1988).

4/ American Psychological Association, *Minutes of Annual Meeting of the Council of Representatives*, 49 Am. Psychologist 628, 628 (1994).

INTRODUCTION AND SUMMARY OF ARGUMENT

The Boy Scouts claim a broad right of association that relieves organizations from following anti-discrimination laws, and potentially any statutory requirements, if it adopts a "moral position" or makes an "expressive decision" that is incompatible. Such a rule confers an unlimited power for organizations to insulate themselves from legislation because every decision reflects the decisionmaker's point of view.[5/]

Focusing solely on decisions reflecting a "moral position" does not provide a useful limit. Prejudice and "moral" judgments have historically been closely intertwined. Entire races have been condemned as being of a lesser moral character. Until quite recently, South Africa prohibited sexual interaction between a white person and an African, Indian or person of mixed background under legislation that was called the "Immorality Amendment." The current meaning of "sinister" derives from a much earlier prejudice against the left-handed.[6/] Members of minority religions have historically been regarded as immoral. In some circles, they are still.[7/]

5/ The Jaycees's and the New York clubs's decisions to exclude women, for example, reflected the view that men and women should have separate clubs. *See Roberts v. United States Jaycees*, 468 U.S. 609 (1984); *New York State Club Ass'n v. City of New York*, 487 U.S. 1 (1988). Such decisions earlier reflected the view that women should remain at home, far from business, world or cultural affairs.

6/ *See* William and Mary Morris, *Dictionary of Word and Phrase Origins* 318 (1962) ("Sinister, which comes from the Latin word of identical spelling, is one of the several words in the English language which reflect an unreasoning prejudice against left-handed persons."). Even today, a "left-handed" compliment means one that is dubious.

7/ *See, e.g.*, <http://hatewatch.org/klan/klan.html> (visited Feb. 8, 2000) (quoting from the White Camelia Knights of Ku Klux Klan's website a complaint that "Our White National Holidays" are being

The decision to exclude people on the basis of sexual orientation is not different in nature than a decision to exclude people on the basis of race, gender or religion. It is a decision based on the status of those excluded, albeit often disguised by unfounded allegations of dangerous or antisocial behavior.[8/]

The considerable body of relevant scientific research provides a context in which to assess the issues in this case. The research, for example, demonstrates that sexual orientation bears no relation to someone's ability to contribute to the community and to influence children to become responsible members of society. Although there is no direct research on gay troop leaders, or gay men in precisely analogous roles, there is extensive scientific research on closely related subjects such as the parenting abilities of homosexual adults and their partners and the psychological and social development of their children. Any assumption that a homosexual orientation adversely affects the ability of an adult to provide responsible leadership for children and youths is contrary to that research. The research also indicates that for most people – especially men – sexual orientation is not "voluntary." The core aspects of sexual orientation typically emerge by early adolescence and are highly resistant to change.

In addition, the research strongly supports New Jersey's concern with the effects of discrimination on those who are excluded. Exclusion, and other forms of discrimination, based on sexual orientation present the same risks of psychological and other harms as discrimination on the basis of race, or

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replaced with "Pro-Black" and "Jewish (Satanic) Holidays."

8/ Jews, for example, were accused of killing Christian babies for their Passover ceremonies, and of causing the Black Plague. Similarly, the Family Research Council and other *amici* frame their anti-gay mission in pseudo-scientific allegations of antisocial behavior. *See, infra*, pp. 12-13.

religion, or gender. Further, the research provides considerable support for anti-discrimination legislation, such as N.J.S.A. 10:5-1 to 5-49, as a means to reduce prejudice in addition to reducing overt discrimination, by increasing interpersonal contact between members of the majority and minority groups.

Conferring broad-based organizations with a readily available means to insulate themselves from anti-discrimination legislation thwarts state policy aimed at alleviating the potentially significant negative psychological, as well as physical and economic, effects of discrimination and prejudice.

ARGUMENT

I. THE NATURE OF SEXUAL ORIENTATION

A. What Causes a Particular Sexual Orientation?

Scientific research and clinical experience indicate that sexual orientation is not "voluntary" for most people. Most people – especially men – do not experience their sexual orientation as the result of conscious choice.[9/] The available studies of gay men indicate that the core feelings and attractions that form the basis for adult sexual orientation

9/ For example, 80% of the 60 gay men in one community sample said they had "no choice at all" about their sexual orientation. *See* Gregory M. Herek, J.C. Cogan, J.R. Gillis & E.K. Glunt, *Correlates of internalized homophobia in a community sample of lesbians and gay men*, 2 J. Gay and Lesbian Med. Ass'n 17-25 (1998). In a larger, not-yet-published study, the same researchers found 72% of the 898 gay men studied reported having "no choice," and another 13% reported "very little choice" (on file with the APA). Summarizing the prevalent view, one researcher explained: "The concept of voluntary choice is as much in error here as in its application to handedness or native language." John Money, *Sin, Sickness or Status? Homosexual Gender Identity and Psychoneuroendocrinology*, 42 Am. Psychologist 384 (1987).

typically emerge by early adolescence.[10/] For some people, adult sexual orientation is predictable by early childhood.[11/] "By the time boys and girls reach adolescence, their sexual preference is likely to be already determined, even though they may not yet have become sexually very active."[12/]

Scientific investigation into developmental precursors of adult sexual orientation has not yet consistently identified those factors for the population as a whole.[13/] It is not yet clear to what extent and in what way genetic, other biological traits, or early childhood experience may contribute to its development. Studies of identical twins have found that "heritabilities were substantial under a wide range of assumptions."[14/] However,

10/ See Alan P. Bell, Martin S. Weinberg & Sue Kiefer Hammersmith, *Sexual Preference: Its Development in Men and Women* 186-87 (1981); Richard R. Troiden, *The Formation of Homosexual Identities*, 17 J. Homosexuality 43, 43-73 (1989) (reviewing research literature).

11/ See J. Michael Bailey & Kenneth J. Zucker, *Childhood Sex-Typed Behavior and Sexual Orientation: A Conceptual Analysis and Quantitative Review*, 31 Dev. Psychol. 43 (Jan. 1995); Richard Green, *The Immutability of (Homo)sexual Orientation: Behavioral Science Implications for a Constitutional (Legal) Analysis*, 16 J. Psychiatry & L. 537 (1988); Richard Green, *The "Sissy Boy Syndrome" and the Development of Homosexuality* 370 (1987).

12/ Bell *et al.*, *supra* note 10, at 186.

13/ *See* Bell *et al.*, *supra* note 10, at 193-211.

14/ J. Michael Bailey & Richard C. Pillard, *A Genetic Study of Male Sexual Orientation*, 48 Archives Gen. Psychiatry 1089 (1991). Bailey and Pillard's study, which has since been replicated, found: where one identical twin was gay, the other was gay in 52% of the cases; where one fraternal twin was gay, the other was also gay in 22% of the cases; and where one brother by adoption was gay, his adoptive brother was gay in just 11% of the cases. *Id.* at 1089. *See also* J. Michael Bailey and Khytam Dawood, *Behavioral Genetics, Sexual Orientation, and the Family, in Lesbian, Gay, and Bisexual Identities in Families* 3 (Charlotte J. Patterson and Anthony R. D'Augelli eds. 1998) (reviewing research); J.

molecular studies of one aspect of DNA have reached inconsistent conclusions with respect to a linkage with sexual orientation.[15/] Another study, as yet unreplicated, reported differences between heterosexual and gay men in the volume of a cell group in the anterior hypothalamus, a brain structure involved in sexual behavior.[16/] Results of a study of women suggests that women who were exposed to certain prenatal estrogens are more likely to be lesbian or bisexual.[17/] Other researchers, critical of this research, have proposed an "interactionist" model, in which genetic factors are

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Michael Bailey, Richard C. Pillard, Michael C. Neale & Yvonne Agyei, *Heritable Factors Influence Sexual Orientation In Women*, 50 Archives Gen. Psychiatry 217 (1993); J. Michael Bailey & Deana S. Benishay, *Familial Aggregation of Female Sexual Orientation*, 150 Am. J. Psychiatry 272 (1993); Frederick L. Whitam, Milton Diamond & James Martin, *Homosexual Orientation in Twins: A Report of 61 Pairs and Three Triplet Sets*, 22 Archives Sexual Behav. 187 (1993).

15/ *See* Dean H. Hamer, Stella Hu, Victoria L. Magnuson, Nan Hu & Angela M.L. Pattatuci, *A Linkage Between DNA Markers on the X Chromosome and Male Sexual Orientation*, 261 Science 321 (1993) (study of 76 gay males and 40 gay brother pairs); Stella Hu *et al.*, 11 Nature Genet. 248 (1995) (follow-up study of 33 additional gay brother pairs); William J. Turner, *Homosexuality, Type 1: An Xq28 Phenomenon*, 24 Archives Sexual Behav. 109 (1995); *but see* George Rice, Carol Anderson, Neil Risch & George Ebers, *Male homosexuality: Absence of linkage to microsatellite markers at Xq28*, 284 Science 665-667 (1999) (attempting, but failing, to replicate the Hamer *et al.* results with a sample of 52 gay sibling pairs).

16/ Simon LeVay, *A Difference in Hypothalamic Structure Between Heterosexual and Homosexual Men*, 253 Science 1034 (1991); *see also* Simon LeVay, *The Sexual Brain* (1993).

17/ See Heino F.L. Meyer-Bahlburg, Anke A. Ehrhardt, Laura R. Rosen & Rhoda S. Gruen, *Prenatal Estrogens and the Development of Homosexual Orientation*, 31 Developmental Psychology 12 (1995).

conceptualized as indirect influences on the development of sexual orientation.[18/]

B. Can Sexual Orientation Be Changed?

Once established, sexual orientation is highly resistant to attempts to change it.[19/] Although some therapists report that their clients changed their sexual orientation in treatment, no scientific comparison with a control group has been reported. Closer scrutiny has shown that such changes were more likely among bisexuals who were highly motivated to reject a homosexual behavior pattern. Many interventions aimed at changing sexual orientation have succeeded only in reducing or eliminating homosexual behavior rather than in creating heterosexual attractions. One scholar concluded upon review of reports on "conversion therapy" that there is no reliable evidence that "sexual orientation is amenable to redirection or significant influence from psychological intervention."[20/]

18/ William Byne & Bruce Parsons, *Human Sexual Orientation: The Biologic Theories Reappraised*, 50 Archives Gen. Psychiatry 228 (1993).

19/ *See* Douglas C. Haldeman, *The Practice and Ethics of Sexual Orientation Conversion Therapy*, 62 J. Consulting & Clinical Psych. 221 (1994) [hereinafter Haldeman, *Practice*]; Douglas C. Haldeman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: A Scientific Examination, in Homosexuality: Research Implications for Public Policy* 149-60 (John C. Gonsiorek & James D. Weinrich eds. 1991) [hereinafter *Homosexuality*]; A. Damien Martin, *The Emperor's New Clothes: Modern Attempts to Change Sexual Orientation, in Innovations in Psychotherapy with Homosexuals* 23-58 (E.S. Hetrick & T.S. Stein eds. 1984).

20/ Haldeman, *Practice*, *supra* note 19, at 224. Moreover, attempts to change someone's sexual orientation runs a risk of causing depression, anxiety, and self-destructive behavior. *See* American Psychiatric Ass'n, No. 98-56, *Position Statement on Psychiatric Treatment and Sexual Orientation* (Dec. 11, 1998) (opposing psychiatric treatment based on the assumption that a patient should change sexual orientation). <http://

II. THE SEXUAL ORIENTATION OF ADULTS DOES NOT ADVERSELY AFFECT THE CHILDREN IN THEIR CARE OR THE CARE THEY PROVIDE.

A. Homosexuality Is Not a Mental Disorder and Does Not Affect Someone's Ability to Be a Responsible Member of Society.

The psychiatric, psychological, and social work professions do not consider homosexual orientation to be a disorder. That conclusion is based on extensive empirical research demonstrating that earlier assumptions about homosexuality cannot be justified by scientific observation. A quarter century ago, the American Psychiatric Association removed "homosexuality" from its list of mental disorders,[21/] declaring that "homosexuality *per se* implies no impairment in judgment, stability, reliability, or general social or vocational capabilities."[22/] Following a rigorous review of the scientific evidence, in 1975, *amicus* adopted the same position, urging all mental health professionals to work to dispel the stigma of mental illness long associated with homosexual orientation.[23/] In the classic study on the subject, a researcher administered Rorschach tests to homosexual and heterosexual men matched

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www.psych.org/news_stand/rep_therapy.html> (visited Feb. 22, 2000).

21/ A mental disorder is "a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (*e.g.*, a painful symptom) or disability (*i.e.*, impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom." American Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV) at xxi (1994).

22/ *Resolution of the American Psychiatric Association* (Dec. 15, 1973), *reprinted in* 131 Am. J. Psychiatry 497 (1974).

23/ *See* American Psychological Ass'n, *Minutes of the Annual Meeting of the Council of Representatives*, 30 Am. Psychologist 620, 633 (1975).

for age, IQ, and education. The two independent experts evaluating the results could not distinguish the sexual orientation of the subjects at a level better than chance, leading the researcher to conclude that "homosexuality as a clinical entity does not exist."[24/] Dozens of studies since support the conclusion that there is no inherent association between someone's sexual orientation and level of mental health."[25/]

Research has demonstrated that "gay people have an overall potential to contribute to society similar to that of heterosexual people."[26/] Empirical studies have shown that gay people are employed productively in a wide range of occupations and professions.[27/] Researchers have found that many gay men also "participate actively in civic, church,

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24/ Evelyn Hooker, *The Adjustment of the Male Overt Homosexual*, 121 J. Projective Tech. 18, 19-20 (1957) (two-thirds of *each* group were found to be in the highest three categories of adjustment).

25/ *See* John C. Gonsiorek, *The Empirical Basis of the Demise of the Illness Model of Homosexuality, in Homosexuality, supra* note 19, at 115-36; Gregory M. Herek, *Myths About Sexual Orientation: A Lawyer's Guide to Social Science Research*, 1 Law & Sexuality 133, 142 (1991) [hereinafter Herek, *Myths*].

26/ Gary B. Melton, *Public Policy and Private Prejudice*, 44 Am. Psychologist 933, 936 (1989); Alan P. Bell & Martin S. Weinberg, *Homosexualities: A Study of Diversity Among Men and Women* 141-48 (1978) [hereinafter Bell & Weinberg, *Diversity*].

27/ *See*, M.V. Lee Badgett & M.C. King, *Lesbian and gay occupational strategies, in Homo Economics: Capitalism, Community, and Lesbian and Gay Life* 73 (A. Gluckman & B. Reed eds. 1997); R.A. Buhrke, *A matter of justice: Lesbians and gay men in law enforcement* (1996); B. Powers & A. Ellis, *A manager's guide to sexual orientation in the workplace* (1995); J.D. Woods & J. H. Lucas, *the corporate closet: The professional lives of gay men in America* (1993).

neighborhood, and political life, most often alongside their non-gay neighbors and friends."[28/]

Like married people, gay couples form deep emotional attachments and commitments, that endure for decades.[29/] A 1991 review of the literature on gay and lesbian couples concluded that "[r]esearch has shown that most lesbians and gay men want intimate relationships and are successful in creating them."[30/] A major study of heterosexual and gay couples in the United States concluded in the early 1980s that "[c]ouplehood, either as a reality or an aspiration, is as strong among gay people as it is among heterosexuals."[31/] Empirical studies have found that between 40% and 70% of gay men and between 60% and 80% of lesbians are involved in steady relationships at a given time.[32/] Because convenience samples tend to underrepresent older persons (who are more likely to be coupled), these figures are probably conservative.[33/] Studies

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28/ David Parr McWhirter & Andrew M. Mattison, *The Male Couple: How Relationships Develop* 286 (1984).

29/ *See* Lawrence A. Kurdek, *Lesbian and Gay Couples, in Lesbian, Gay, and Bisexual Identities Over the Lifespan* 243 (Anthony R. D'Augelli & Charlotte J. Patterson eds. 1995) (reviewing literature).

30/ Letitia Anne Peplau, *Lesbian and Gay Relationships*, in *Homosexuality, supra* note 19, at 195.

31/ P. Blumstein & P. Schwartz, *American Couples* 45 (1983).

32/ *See, e.g.*, Rochelle L. Klinger, *Lesbian Couples, in Homosexuality and Mental Health* 339, 340 (Robert P. Cabaj & Terry S. Stein eds 1996); Kurdek, *supra* note 29, at 243; Bell & Weinberg, *Diversity, supra* note 26; J. Harry, *Gay Couples* (1984).

33/ Peplau, *Lesbian and Gay Relationships, supra* note 30, at 195.

that have included older persons in the samples report relationships lasting decades.[34/]

B. Gay Adults Do Not Present a Heightened Danger of Sexual Abuse.

One manifestation of prejudice has been the allegation that gay men pose a particular danger to children. However, all available research data and clinical experience indicates that gay men are not more likely than heterosexual men to sexually abuse children. A study of children seen for sexual abuse in a one-year period at a Denver children's hospital, for example, found that less than one percent of the identified adult offenders were gay or lesbian. Of the 219 abused girls, only one instance of abuse had been attributed to a lesbian. Of the 50 abused boys, only one instance of abuse had been attributed to a gay man. In contrast, 88 percent of the offenders had documented heterosexual relationships and most were heterosexual partners of a family member (77 percent of those who abused the girls and 74 percent of those who abused the boys).[35/]

One source of confusion in this area is that many men who sexually abuse boys are not themselves homosexual. Rather, they are attracted, entirely or predominately, to children. These men have never developed a mature sexual orientation, either heterosexual or homosexual.[36/] One study of 175 adult males who had been convicted in Massachusetts for sexual assault of

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34/ *See, e.g.*, Bryant & Demian, *Relationship Characteristics of American Gay and Lesbian Couples: Findings from a National Study*, 1 J. Gay & Lesbian Soc. Sci. 101 (1994).

35/ *See* Carole Jenny *et al.*, *Are Children at Risk for Sexual Abuse by Homosexuals?*, 94 Pediatrics 41 (July 1994) (study of 269 sexually abused children when an adult offender was identified).

36/ *See* D. Finkelhor & S. Araji, *Explanations of pedophilia: A four factor model*, 22 J. Sex Research 145-161 (1986).

a child found that 47 percent were exclusively interested in children, 40 percent were regressed heterosexuals, and 13 percent were regressed bisexuals.[37/] None had an exclusively homosexual orientation, and none of those who were bisexual were primarily attracted to men.[38/]

Assertions to the contrary by Family Research Council and others cannot be considered reliable. These *amici* seriously mischaracterize research[39/] and rely on dubious sources.[40/]

37/ *See* A.N. Groth & H.J. Birnbaum, *Adult sexual orientation and attraction to underage persons*, 7 Archives Sexual Behav. 175 (1978).

38/ *Id.* at 180. Another study, of priests and other clergy sent or self-committed to a residential treatment facility over a 25-year period, found that those who had been involved in age-inappropriate sexual activity and those who had been involved in adult homosexual relationships were "two quite distinct groups," with "[s]triking differences, and statistically significant ones." John Allan Loftus & Robert J. Camargo, *Treating the Clergy*, 6 Annals of Sex Research 287, 295 (1993).

39/ For example, the Council mischaracterizes Freund and Watson as finding that one-third of child molesters are gay. *See* FRC Br. at 23. In contrast, the study found that one-third of the abused *children* studied were male, and specifically cautioned: "This, of course, should not be understood as saying that androphiles [gay men] may have a greater propensity to offend against children than do gynephiles [heterosexual men], a myth refuted in an earlier study." K. Freund and R.J. Watson, *The Proportions of Heterosexual and Homosexual Pedophiles Among Sex Offenders Against Children: An Exploratory Study*, J. of Sex & Marital Therapy 41 (1992). The Council's misciting of Marshall, FRC Br. at 25, is equally egregious. The study does not support a presumption that homosexuality is linked to abuse. It found only that of 34 men who had abused boys, 31had abused only boys – not that those 31 were homosexual. Only 2 of the 34 reported regular homosexual behavior with adults. Similarly, PAUS *et al.* misrepresent Bell and Weinberg's study as supporting its claim that young teenagers are "recruited" through affairs with older homosexuals. PAUS Br. at 25. Although the study found that 60% of white homosexual respondents identified their first partner in an affair as older than they were, the same paragraph makes clear that the vast majority of the respondents were at least 20 years old at the time.

Their presumption that homosexual men are pedophiles is contrary to the legitimate research in the field, just as any such presumption about heterosexual men would be.[41/]

C. Sexual Orientation Is Not a Predictive Factor for Parenting Skills or Children's Outcomes.

The considerable body of research on the children, and the parenting abilities, of gay men and lesbians has consistently found that they are as good parents as their heterosexual counterparts and that their children do not differ appreciably from children raised by heterosexuals.[42/]

40/ The Council, for example, relies on the long discredited work of Paul Cameron, FRC Br. at 24-25. *See Minutes of the Nebraska Psychological Ass'n* (Oct. 19, 1984) (adopting a resolution dissociating itself from writings and views of Mr. Cameron on sexuality); *Baker v. Wade*, 106 F.R.D. 526, 536 (N.D. Tex. 1985) (referring to Mr. Cameron's testimony that homosexuals abuse children at greater rate than heterosexuals as misrepresentation and fraud on the court). *See also* FRC Br. at 23-24 (relying on statements from anti-gay organization NARTH not based on empirical data). Similarly, reliance on the journalistic work by Jay and Young reporting survey responses by gay and bisexual men that they had sex "at some time" with boys 16-19 years old or younger, FRC Br. at 23, PAUS Br. at 24, is questionable on several grounds. The survey did not distinguish between respondents who had experienced a sexual encounter with an age-mate *as a teenager* from any who had encounters with teenagers *as adults*. The authors also used inadequate methodologies that would not be relied on by scientists.

41/ Moreover, warranted suspicions that any particular scout has or would abuse children would constitute grounds for exclusion. The Council's suggestion that only *convicted* pedophiles could be excluded, FRC Br. at 29-30, is not supported by the state laws under review.

42/ Because of the impossibility of proving a negative, researchers have approached these questions by attempting to find differences between children of homosexual parents and those of heterosexual parents and differences between the parenting approaches of homosexual

1. Parenting skills and philosophies

Scientific research indicates that gay parents are little different from heterosexual parents.[43/] Several studies have evaluated the parenting philosophies and skills of gay men and have concluded that "gay fathers are similar to nongay fathers in their overall parenting abilities and skills."[44/] Such research suggests that the "gay fathers are at least equal to heterosexual fathers in the quality of their parenting."[45/] Indeed, two researchers reviewing the scientific literature in this area

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and heterosexual parents. The more that different studies by different researchers consistently fail to find statistically significant differences, the more likely it is that differences between groups truly do not exist. It is therefore useful to consider the entire body of empirical research in this area, to move beyond the idiosyncrasies of sample or methodology of any one study. A consistent pattern from different samples and different methods provides a basis for confidence in the results.

43/ *See* G. Dorsey Green & Frederick W. Bozett, *Lesbian Mothers and Gay Fathers, in Homosexuality, supra* note 19, at 213 (reviewing studies) [hereinafter Green & Bozett, *Lesbian Mothers*]; *see also* Charlotte J. Patterson, *Children of Lesbian and Gay Parents*, 63 Child Dev. 1025 (1992) (reviewing studies) [hereinafter Patterson, *Children*]; Mary B. Harris & Pauline H. Turner, *Gay and Lesbian Parents*, 12 J. Homosexuality 101, 104 (1985-86) (study of gay, lesbian and heterosexual parents).

44/ Jerry J. Bigner & R. Brooke Jacobsen, *Parenting Behaviors of Homosexual and Heterosexual Fathers*, 18 J. Homosexuality 173, 181 (1989) [hereinafter Bigner & Jacobsen, *Parenting Behavior*].

45/ Jerry J. Bigner & Frederick W. Bozett, *Parenting by Gay Fathers*, 14 Marriage & Fam. Rev. 155 (1989), *reprinted in Homosexuality and Family Relations* 155, 173 (Frederick W. Bozett & Marvin B. Sussman eds., 1990) [hereinafter Bigner & Bozett, *Parenting by Gay Fathers*]; *see also* Frederick W. Bozett, *Gay Fathers: A Review of the Literature*, 18 J. Homosexuality 137 (1989), *reprinted in Psychological Perspectives of Lesbian and Gay Male Experiences* 437, 453 (Linda D. Garnets & Douglas C. Kimmel eds., 1993) [hereinafter Bozett, *Gay Fathers*] (reviewing research).

concluded: "It is evident . . . that both lesbians and gay men who are parents are as sufficient in the roles as heterosexuals, and that the home life they provide is at least of equal quality."[46/] Some researchers have found that gay fathers make greater efforts to create a stable home environment and positive relationship with their children than heterosexual fathers.[47/]

One study found no differences between homosexual and heterosexual fathers in their degree of involvement with their children or in the level of intimacy they had with their children. The differences the study did find were that homosexual fathers were more likely to set and enforce limits on their children's behavior, were more responsive to their children's needs, and were more likely to explain the reasons for rules.[48/]

Another study comparing gay and heterosexual fathers' responses to standard measures of parental attitudes and responses concluded: "no discernible parenting style could be found to distinguish one group from the other."[49/] Similarly, a

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46/ Green & Bozett, *Lesbian Mothers, supra* note 43, at 197; *see also* Susan Golombok *et al., Children Raised in Fatherless Families from Infancy: Family Relationships and the Socioemotional Development of Children of Lesbian and Single Heterosexual Mothers*, 38 J. Child. Psychiat. 787, 789 (1997) [hereinafter Golombok *et al., Infancy*] (finding the parenting skills of lesbians and female heterosexuals comparable).

47/ Robert L. Barret & Bryan E. Robinson, *Gay Dads, in Redefining Families: Implications for Children's Development* 157, 163 (Adele Eskeles Gottfried & Allen W. Gottfried eds., 1994) [hereinafter Barret & Robinson, *Gay Dads*].

48/ Bigner & Jacobsen, *Parenting Behavior, supra* note 44, at 179-80 (comparing responses of 33 gay fathers and 33 heterosexual fathers on Iowa Parenting Behavior Inventory.)

49/ Jerry J. Bigner & R. Brooke Jacobsen, *Adult Responses to Child Behavior and Attitude Toward Fathering: Gay and Nongay Fathers*, 23 J. Homosexuality 99 (1992) (comparing 24 gay and 29 heterosexual

study comparing gay and lesbian parents to heterosexual parents found "no significant differences in the relationships of the two sets of parents with their children."[50/] With respect to sexual identity and sex role aspects of parenting, "no differences were found" on the parents' encouragement of same-sex friends or in their encouragement of gender-typed toys for their own children.[51/]

There is an even larger body of research on lesbian mothers that compares their parenting skills and attitudes to those of heterosexual mothers. These studies consistently demonstrate a "remarkable absence of distinguishing features between the life-styles, child-rearing practices, and general demographic data" of lesbian mothers and heterosexual mothers.[52/] This research provides additional support for the conclusion that sexual orientation is not an important variable in predicting parenting ability.[53/]

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fathers).

50/ Harris & Turner, *supra* note 43, at 111.

51/ Harris & Turner, *supra* note 43, at 110. As an overall matter, only a minority of heterosexual or homosexual parents of either gender encouraged play with gender-typed toys.

52/ Beverly Hoeffer, *Children's Acquisition of Sex-Role Behavior in Lesbian Mother Families*, 51 Am. J. Orthopsychiatry 536, 537 (1981) [hereinafter Hoeffer, *Children's*].

53/ *See, e.g.*, David K. Flaks *et al.*, *Lesbians Choosing Motherhood: A Comparative Study of Lesbian and Heterosexual Parents and Their Children*, 31 Dev. Psychol. 105 (Jan. 1995); Martha Kirkpatrick *et al.*, *Lesbian Mothers and Their Children: A Comparative Study*, 51 Am. J. Orthopsychiatry 545, 546 (1981).

2. Sexual and gender development

Research into the three aspects of sexual identity -- gender identity, gender role, and sexual orientation -- consistently demonstrates no differences between children of gay or lesbian parents and children of heterosexual parents.[54/] Research involving children of gay fathers indicates that these children develop gender role identifications (self-identification as male or female) that are consistent with their biological sex.[55/] Similarly, comparisons of children raised by lesbian and heterosexual mothers found no appreciable differences.[56/] Most

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54/ *See, e.g.*, Julie S. Gottman, *Children of Gay and Lesbian Parents*, 14 Marriage & Fam. Rev. 177 (1989), *reprinted in Homosexuality and Family Relations* (Frederick W. Bozett ed. 1990) ("children of lesbian mothers and gay fathers appear to be normal in gender identity, gender role, sexual orientation, and social adjustment").

55/ Green & Bozett, *Lesbian Mothers*, *supra* note 43, at 200 (reporting on findings of researchers Turner, Scadden and Harris, presented at First Future of Parenting Symposium, Chicago, Illinois, March 1985); Gottman, *supra* note 54, at 177, 191.

56/ *See, e.g.*, Susan Golombok *et al.*, *Children in Lesbian and Single-Parent Households: Psychosexual and Psychiatric Appraisal*, 24 J. Child Psychol & Psychiat. 551, 568 (1984) [hereinafter Golombok *et al.*, *Appraisal*]; Gottman, *supra* note 54, at 189; Kirkpatrick *et al.*, *supra* note 53, at 551; Richard Green, *The Best Interests of the Child With A Lesbian Mother*, 10 Bull. AAPL 7, 14 (1982) [hereinafter Green, *Best Interests*]; Richard Green *et al.*, *Lesbian Mothers and Their Children: A Comparison with Solo Parent Heterosexual Mothers and Their Children*, 15 Archives of Sexual Behav. 167 (1986) [hereinafter Green *et al.*]; *see also* Richard Green, *Sexual Identity of 37 Children Raised by Homosexual or Transsexual Parents*, 135 Am. J. Psychiatry 692 (1978) [hereinafter Green, *Sexual Identity*] (studying sexual identities of children raised by both transsexual men and lesbians).

children in both groups identified with their biological sex[57/] and indicated satisfaction with their gender.[58/] Likewise, the comparisons revealed no appreciable differences in gender role behavior (tendency to engage in activities traditionally regarded as masculine or feminine).[59/]

Research indicates that the same prevalence rates for heterosexuality and homosexuality holds for children of gay and lesbian parents as for children of only heterosexual parents.[60/] For example, a study of 82 sons (17 years or older) of 55 gay or bisexual fathers concluded that 91 percent of those whose sexual orientation could be rated were heterosexual. Furthermore, the sons' sexual orientations were unrelated to the amount of time they spent living with their fathers, the frequency of their contact with their fathers, the degree to which they accepted their father's sexual orientation or the

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57/ *See, e.g.*, Kirkpatrick *et al.*, *supra* note 53, at 551; Green *et al.*, *supra* note 56, at 174, 179-80; Green, *Sexual Identity, supra* note 57, at 693, 696-97.

58/ *See, e.g.*, Green *et al.*, *supra* note 56, at 176.

59/ Charlotte J. Patterson, *Children of the Lesbian Baby Boom: Behavioral Adjustment, Self-Concepts, and Sex Role Identity, in Lesbian and Gay Psychology: Theory Research and Clinical Applications* 156, 168-69 (Beverly Greene & Gregory M. Herek eds. 1994) [hereinafter Patterson, *Baby Boom*]; Golombok *et al.*, *Appraisal, supra* note 56, at 568; Gottman, *supra* note 54, at 189; Kirkpatrick *et al.*, *supra* note 53, at 551; Hoeffer, *Children's*, *supra* note 52; Green, *Best Interests*, *supra* note 56, at 14.

60/ *See* Charlotte J. Patterson & Raymond W. Chan, *Gay Fathers and Their Children, in Textbook of Homosexuality and Mental Health* (Robert P. Cabaj & Terry S. Stein eds., 1997) 371, 382 (summarizing research); Herek, *Myths*, *supra* note 25, at 133, 157-61; Bozett, *Gay Fathers*, *supra* note 45, at 442.

quality of the father-son relationship.[61/] Another study of 40 gay fathers and their children determined that, of the 21 sons who were old enough for sexual orientation to be assessed, only one was gay.[62/] These findings corroborate other research indicating that the sexual orientation of the father or the relationship between child and gay father is not predictive with respect to the child's sexual orientation.[63/]

Similarly, studies of children raised by lesbian mothers have found that these children "are generally no more likely than their peers from heterosexual mother families to identify themselves as gay or lesbian or to be attracted to someone of the same gender."[64/] Thus, researchers have concluded: "The

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61/ J. Michael Bailey *et al.*, *Sexual Orientation of Adult Sons of Gay Fathers*, 31 Dev. Psychol. 124, 126 (Jan. 1995) (finding that the gay sons had lived with their fathers for somewhat shorter periods than had the heterosexual sons but the difference was not statistically significant).

62/ Brian Miller, *Gay Fathers and Their Children*, 28 Family Coordinator 544, 546 (1979) (finding also that three of the 27 daughters were lesbian).

63/ *See* Patterson & Chan, *supra* note 60, at 382 (summarizing research); Bozett, *Gay Fathers*, *supra* note 45, at 442; Barret & Robinson, *Gay Dads, supra* note 47, at 161-62; Robert L. Barret & Bryan E. Robinson, *Gay Fathers* 80 (1990).

64/ Fiona L. Tasker & Susan Golombok, *Growing Up in a Lesbian Family* 132 (1997) (comparing adult sons and daughters who had been raised by lesbian and heterosexual mothers, as part of a longitudinal study in which the sample was recruited before the children's sexual orientation was established). Other studies of children raised by a lesbian parent or couple have likewise found no statistically significant difference between these children's expressed sexual orientation and that of children raised by a heterosexual parent or parents. *See, e.g.*, Gottman, *supra* note 54, at 177, Green, *Best Interests*, *supra* note 56, at 13-14; Sharon Huggins, *A Comparative Study of Self-Esteem of Adolescent Children of Divorced Lesbian Mothers and Divorced Heterosexual Mothers, reprinted in Homosexuality and the Family* 123, 132-35 (Frederick W. Bozett ed.,

truth is that most children of homosexual men and women turn out to be heterosexual."[65/] A reverse study of the sexual orientation of 702 parents of gay men and lesbians revealed that 90 percent of the parents were heterosexual, 4 percent were bisexual, and only 6 percent were homosexual.[66/]

3. Psychological and social adjustment

As relatively few single fathers generally, including gay fathers, have historically received custody of their children, research on children raised by homosexual parents has focused mostly on children being raised by a lesbian mother (and in many cases her partner). The consistent conclusion drawn from these studies is that the children demonstrate no appreciable differences in intellectual development[67/] or in psychological well-being or social adjustment from children raised by heterosexual parents.[68/] Fewer studies have been made of

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1989).

65/ Barret & Robinson, *Gay Fathers, supra* note 63, at 40.

66/ *Id.* (citing B.E. Robinson, *et al.*, *Response of Parents to Learning that their Child is Homosexual and Concern Over and AIDS: A National Study*, 18 J. Homosexuality 59-80 (1989)).

67/ Green *et al.*, *supra* note 56, at 174 (reporting that the intelligence quotient of children is not appreciably different when they are raised by a lesbian mother as opposed to a heterosexual mother).

68/ *See, e.g.*, Tasker & Golombok, *supra* note 64, at 1 (a twenty-year longitudinal study of parents and children in the UK); Flaks *et al.*, *supra* note 53, (studying parents and children in Pennsylvania); Green *et al.*, *supra* note 56 (studying parents and children in both rural and urban areas in Connecticut, Florida, Illinois, Massachusetts, Minnesota, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin).

children of gay fathers, but the results of those studies are consistent with the studies of children of lesbian parents.[69/]

Although concern is sometimes voiced that children of gay men and lesbians will suffer dysfunction as a result of their parents' sexual orientation, research does not bear this out.[70/] Two scientists reviewing studies in this area have commented:

> [A] striking feature of the research on lesbian mothers, gay fathers, and their children . . . is how similar the groups of gay and lesbian parents and their children are to the heterosexual parents and their children that were included in the studies.[71/]

The more extensive research on children being raised by lesbian parents provides consistent evidence that the sexual orientation of parents is not a predictive variable in the psychological and social development of children. In studies of single-parent households produced by divorce, children raised by lesbian mothers and by heterosexual mothers demonstrated largely identical levels of psychological adjustment.[72/] No statistically significant differences were found in the prevalence of emotional or behavioral problems

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69/ *See, e.g.*, Bozett, *Gay Fathers, supra* note 45, at 454; Barret & Robinson, *Gay Dads, supra* note 47, at 168.

70/ *See* Bigner & Bozett, *Parenting by Gay Fathers, supra* note 45, at 163 ("There is no evidence of any kind that demonstrates that living with a homosexual parent has any significant negative effects on children."); Gottman, *supra* note 54, at 191 ("Parental homosexuality does not appear to directly or indirectly harm the child.").

71/ Green & Bozett, *Lesbian Mothers, supra* note 46, at 197, 213; *see also* Patterson, *Children, supra* note 43, at 1036 (comprehensively reviewing research on the subject and drawing similar conclusion).

72/ *See, e.g.*, Kirkpatrick *et al.*, *supra* note 53, at 545-51; Golombok *et al.*, *Appraisal, supra* note 56.

such as unsociableness, emotional difficulty, hyperactivity, or conduct problems.[73/] Similarly, a study of children raised by divorced mothers in two-adult households concluded there was no difference in the self-concepts and levels of self-esteem of adolescents who lived with a lesbian mother and her same-sex partner and adolescents who lived with a mother and her opposite-sex partner. All fell within the normal range.[74/]

Following such children into adulthood, researchers found that those raised by lesbian mothers were no more likely to experience anxiety or depression, no more likely to have sought professional help for mental health problems, and no more likely to have experienced periods of unemployment than adults raised by heterosexual mothers.[75/] Another study of adult daughters found no higher incidence of emotional problems among those who had been raised by a lesbian mother than among those raised by a heterosexual mother.[76/]

73/ Golombok *et al.*, *Appraisal*, *supra* note 56, at 565, 570.

74/ Huggins, *supra* note 64, at 132-35.

75/ Tasker & Golombok, *supra* note 64, at 135, 138, 143-44 (data gathered from same sample in 1976 and 1991). Responses from children raised by lesbian mothers and from children raised by heterosexual mothers to standardized measures of anxiety and depression were not only comparable to each other, but also closely comparable to U.S. norms. *Id.* at 135. Those, from both groups, who had experienced mental health problems were youths whose mothers had reported poor mental health at the time of the 1976 study. *Id.* at 144, 147.

76/ Gottman, *supra* note 54, at 177-96. This study in fact concluded that adult daughters of lesbians felt more secure in relationships and in the world in general than adult daughters raised by heterosexual mothers. Adult daughters raised by heterosexual mothers exhibited greater apathy and cautiousness than their peers raised by lesbians, who were freer of disillusionment and doubt and tended to have fewer complaints and worries than the women raised by heterosexual mothers. *Id.* at 189-90.

Consistent with the results of research on children of divorced parents, the research on children raised from birth in lesbian households has also found psychological parity between these children and their peers from heterosexual households. In a recent study comparing children raised from birth in lesbian households with matched children raised in heterosexual households, the researchers found it "impossible to distinguish" between the groups of children on the basis of social competence or behavior problems.[77/] The study concluded that "[p]resent data are consistent with the notion that parenting ability and sexual orientation are unrelated."[78/] A study comparing children raised from birth by a lesbian couple with matched children raised by married heterosexual parents, found no differences in behavioral functioning, cognitive abilities, developmental progress, social skills, or school performance.[79/] And a study comparing children raised from birth by a lesbian mother with children raised by a single heterosexual mother also found no differences in the children's psychological well-being or behavior.[80/]

A recent review of the research concluded that children raised by lesbian mothers or lesbian couples "have play and activity preferences that are similar to children raised in heterosexual households, and do not show heightened anxiety,

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77/ Raymond W. Chan *et al.*, *Psychosocial Adjustment Among Children Conceived Via Donor Insemination by Lesbian and Heterosexual Mothers*, 69 Child Dev. 443 (April 1998).

78/ *Id.*

79/ Flaks *et al.*, *supra* note 53, at 16-20, 24.

80/ Golombok *et al.*, *Infancy*, *supra* note 46 (the only statistically significant difference between the two groups was greater interaction between the lesbian mothers and their children). *See also* Patterson, *Baby Boom*, *supra* note 59, at 156, 165-67.

depression, or behavior problems."[81/] All the scientific research to date also indicates that children raised by lesbian parents do not differ appreciably from children of heterosexuals with respect to maternal ratings of the children's leadership qualities and popularity, the children's self-ratings of popularity, or overall social adjustment.[82/]

III. THE CONTINUING PREJUDICE AGAINST GAY PEOPLE REQUIRES, AND WILL BE ABATED BY, ANTI-DISCRIMINATION LEGISLATION.

A. Gay People Face Prejudice and Discrimination.

New Jersey's anti-discrimination law addresses a genuine concern. Homosexuality has been subject to intense prejudice and discrimination. Extreme prejudice and even persecution were common in Europe from at least the Middle Ages.[83/] In America, prejudice and discrimination against gay men and

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81/ Jeffrey J. Haugaard *et al.*, *Lesbian-Headed Households*, 1 Adoption Q. 93, 100-01 (1998) (noting that these children "do not show indications of abnorma! development"). *See also* Gail S. Goodman *et al.*, *Developmental Psychology and Law: Divorce, Child Maltreatment, Foster Care, and Adoption*, *in Handbook of Child Psychology* 775, 846 (William Damon *et al.* eds., 1998) ("there is no evidence that children raised by gay or lesbian parents develop abnormally").

82/ Green *et al.*, *supra* note 56, at 178; Golombok *et al.*, *Appraisal*, *supra* note 56, at 565-67.

83/ *See* Richard Posner, *Sex and Reason* 346 (1992) ("[H]omosexuals–who, like Jews, are despised more for what they are than for what they do–were frequently bracketed [with Jews] in medieval persecutions."); John Boswell, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century* (1980). Thousands of gay people were exterminated along with Jews, Roma, and Jehovah's Witnesses in Nazi concentration camps. *See, e.g.*, Heinz Heger, *The Men with the Pink Triangle* (David Fernbach trans., 1980).

lesbians has been widespread since colonial times.[84/] Indeed, "lesbians and gay males have been the object of some of the deepest prejudice and hatred in American society."[85/] Until 1990, gay people were frequently excluded from emigrating to the United States under a statute denying entry to persons "afflicted with psychopathic personality, or sexual deviation,"[86/] even though the disciplines of psychiatry and psychology had rejected the view that homosexuality is a mental disorder in the 1970s. *See, supra,* pp. 8-9.

Intense prejudice against gay men and lesbians remained widespread throughout much of the twentieth century, and public opinion studies routinely showed that, among large segments of the public, gay people were the target of strong antipathy.[87/] Although a pronounced shift in public opinion

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84/ *See, e.g.*, George A. Chauncey, Jr., *Gay New York: Gender, Urban Culture and the Making of the Gay Male World, 1890-1940* (1994); Lillian Faderman, *Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America* (1991); Allan Berube, *Coming Out Under Fire: The History of Gay Men and Women in World War Two* (1990); John D'Emilio, *Sexual Politics, Sexual Communities: The Making of a Homosexual Minority in the United States, 1940-1970* (1983); Jonathan Ned Katz, *Gay American History: Lesbians and Gay Men in the U.S.A.* (1976).

85/ Melton, *supra* note 26; *see also* Posner, *supra* note 83, at 291 ("In the United States . . . , not only is there a strong residue of hostility to homosexuals, but they labor under a series of legal disabilities.").

86/ *See* 8 U.S.C. § 1182(a)(4)(1988); *see Boutilier v. Immigration & Naturalization Serv.*, 387 U.S. 118, 122 (1967).

87/ *See*, Gregory M. Herek, J. Gillis & J. Cogan, *Psychological sequelae of hate crime victimization among lesbian, gay, and bisexual adults*, 67 J. Consulting & Clinical Psych. 945 (1999) [hereinafter Herek *et al.*]; W. Schneider & I.A. Lewis, *The straight story on homosexuality and gay rights*, 2/3 Public Opinion 16-20, 59-60 (1984); C. De Boer, *The polls: Attitudes toward homosexuality*, 42 Public Opinion Q. 265 (1978).

occurred in the 1990s concerning homosexuality,[88/] hostility toward gay men and lesbians remains common in contemporary American society.[89/] Discrimination in such critical areas as employment and housing appears to be widespread.[90/] And even though eleven states, including New Jersey, and several cities have enacted applicable anti-discrimination laws, such discrimination remains lawful in most jurisdictions.

A particularly severe outcome of this prejudice is the consistently high rate of anti-gay harassment and violence.

88/ Growing numbers regard homosexuality as an alternative lifestyle and a majority favors protecting homosexuals from discrimination and abuse. *See* K. Sherrill & A. Yang, *From outlaws to in-laws: Anti-gay attitudes thaw*, 11 Public Perspective 20 (2000); A. Yang, *Trends: Attitudes toward homosexuality*, 61 Public Opinion Q. 477-507 (1997).

89/ *See* Sherrill & Yang, *supra* note 88, at 21 ("gay people remain the most systematically and intensely disliked of all the groups measured" in the ongoing American National Election Studies).

90/ A study published by the National Gay and Lesbian Task Force Policy Institute, reviewing a national and 20 city and state surveys of gay, lesbian, and bisexual people conducted between 1980 and 1991, found that 16% to 44% of respondents reported experiencing employment discrimination. A majority said they feared discrimination or concealed their sexual orientation to try to avoid it. The study's authors noted that discrimination was also common in housing, public accommodations, and health care. M.V. Lee, Colleen Donnelly & Jennifer Kibbe, *Pervasive Patterns of Discrimination against Lesbians and Gay Men: Evidence from Surveys Across the United States* (1992). A 1997 research review found 27% to 68% of gay, lesbian, and bisexual people reporting losing jobs or promotions because of sexual orientation. Even those in supposedly tolerant professions (*e.g.*, law, medicine, academia) reported discrimination. M.V. Lee Badgett, *Vulnerability in the Workplace: Evidence of Anti-Gay Discrimination*, 2 Angles: J. Inst. Gay and Lesbian Strategic Studies 1 (1997). *See also* Martin P. Levine, *Employment Discrimination Against Gay Men*, 9 Int'l Rev. Mod. Soc. 151 (1979); Martin P. Levine & Robin Leonard, *Discrimination Against Lesbians in the Work Force*, 9 Signs: J. Women Culture & Soc. 700 (1984).

Numerous surveys indicate that verbal harassment is a nearly universal experience.[91/] Although physical violence is less common, substantial numbers report having experienced crimes against their person or property because of their sexual orientation.[92/] In 1998, the most recent year for which FBI statistics are available, there were 1,248 reported hate crimes against gay men, lesbians, or bisexuals.[93/] That figure likely represents only some fraction of such crimes because reporting of hate crimes by law enforcement agencies is voluntary, the thoroughness of police statistics differs widely among jurisdictions, and many victims do not report their experiences to police because they fear further harassment or lack

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91/ *See* Kevin T. Berrill, *Anti-Gay Violence and Victimization in the United States: An Overview, in Hate Crimes: Confronting Violence Against Lesbians and Gay Men* 20 (Gregory M. Herek & Kevin T. Berrill eds. 1992) (median proportion of respondents, in 24 surveys, who had been verbally harassed was 80%); *see also* Gregory M. Herek, J.R. Gillis, J.C. Cogan & E.K. Glunt, *Hate crime victimization among lesbian, gay, and bisexual adults*, 12 J. Interpersonal Violence 195-215 (1997) (finding that 82% of gay, lesbian, and bisexual respondents reported having experienced verbal abuse related to their sexual orientation); N.W. Pilkington & Anthony R. D'Augelli, *Victimization of lesbian, gay, and bisexual youth in community settings*, 23 J. Community Psychology 34-56 (1995) (80% of respondents in multi-state sample of adolescents and young adults reported experiencing verbal harassment).

92/ *See, e.g.*, Kevin T. Berrill, *supra* note 91 (across 24 separate studies a median of 44% of gay, lesbian, and bisexual respondents reported having been threatened with violence because of their sexual orientation, 19% had their property vandalized, 17% had been physically assaulted)); Herek *et al.*, *supra* note 87 (28% of gay men and 19% of lesbians had experienced an antigay crime in adulthood, based on study of 2,259 gay men, lesbians, and bisexuals); Gary David Comstock, *Violence Against Lesbians and Gay Men* (1991); Special Issue, *Violence Against Lesbians and Gay Men: Issues for Research, Practice, and Policy*, 5 J. Interpersonal Violence 267-543 (1990).

93/ <http://www.fbi.gov/ucr/98hate.pdf> at 7 (visited Mar. 20, 2000).

confidence that the assailants will be caught.[94/] Gay people subjected to violence based on their sexual orientation appears to experience even greater psychological trauma than with other types of violent crime.[95/]

B. Anti-discrimination Laws Can Reduce Prejudice as Well as its Effects.

The relevant scientific research supports the conclusion that New Jersey's regulatory approach is likely to ameliorate prejudice and discrimination against gay people. Although the specific forms of prejudice against minority groups differ, the psychological processes underlying heterosexuals' prejudices against gay people are similar to those underlying racial, ethnic, gender, and religious prejudices.[96/]

Empirical research consistently demonstrates that having personal contact with an openly gay person is one of the most powerful influences on heterosexuals' tolerance and acceptance of gay people. Anti-gay attitudes have been found to be

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94/ Herek *et al.*, *supra* note 87 (study of 2,259 gay men, lesbians, and bisexuals, found that gay men had reported only 46% of hate-crime victimizations but 72% of other victimizations, and lesbians had reported only 36% of hate-crime victimizations but 68% of other victimizations).

95/ Herek *et al.*, *supra* note 87, found that victims of antigay violent crimes showed significantly more symptoms of depression, anger, anxiety, and post-traumatic stress, and significantly more crime-related fears and beliefs, a lower sense of mastery, and more attributions of their setbacks to prejudice than did lesbian and gay victims of other violent crimes during the same time period. *See also* Linda D. Garnets, Gregory M. Herek & Barrie Levy, *Violence and Victimization of Lesbians and Gay Men: Mental Health Consequences*, 5 J. Interpersonal Violence 366 (1990), *reprinted in Psychological Perspectives on Lesbian and Gay Male Experiences* (Linda D. Garnets & Douglas C. Kimmel eds., 1993).

96/ *See, e.g.*, S.L. Franzoi, *Social Psychology* 382-427 (1995); K. Gergen & M. Gergen, *Social Psychology* 140-41 (1981).

significantly less common among the one-third of the population who has a friend, relative, or acquaintance who is known by the person to be gay.[97/] A meta-analysis of hundreds of studies of contact and prejudice, based on sexual orientation, nationality, race, age, or disability, found a highly significant inverse relationship between contact and prejudice for all studies, samples, and tests.[98/] The analysis found that more rigorous studies (based on observed contact rather than reported contact) yielded greater effects; that contact changed attitudes toward the entire "outgroup" not just toward those with whom subjects had contact, and that majority group participants experienced greater changes in attitude than minority group

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97/ See Gregory M. Herek & John P. Capitanio, *Some of my best friends: Intergroup contact, concealable stigma, and heterosexuals' attitudes toward gay men and lesbians*, 22 Personality & Social Psych. Bull. 412-24 (1996) (national survey demonstrated that those with interpersonal contact with gay men and lesbians were more likely to have positive attitudes toward gay people; more and closer relationships correlated with more positive attitudes); Gregory M. Herek & Eric K. Glunt, *Interpersonal Contact and Heterosexuals' Attitudes Toward Gay Men: Results from a National Survey*, 30 J. Sex Research 239 (1993) (interpersonal contact predicted attitudes toward gay men better than did any other demographic or social psychological variable tested); *Familiarity Encourages Acceptance*, 11 Public Perspective 31(2000) (reporting data from a 1998 survey by Princeton Survey Research Associates for Newsweek, showing that greater personal familiarity with gay people was associated with stronger support for gay rights).

98/ Thomas F. Pettigrew & Linda R. Tropp, *Meta-analytic Tests of Intergroup Contact Theory*, presented at Society for Experimental Social Psychology Conference, Oct. 1999 (on file with the APA); Thomas F. Pettigrew & Linda Tropp, *Does intergroup contact reduce prejudice?, in Reducing Prejudice and Discrimination: Social Psychological Perspectives* (Stuart Oskamp ed. 2000).

members. Of all the types of prejudice studied, interaction with homosexuals yielded the greatest reductions in prejudice.[99/]

Exclusion by an institution like the Boy Scouts, which undertakes to serve the whole community and is sponsored in many places by government entities such as public schools and police departments, interferes with this process and serves instead to reinforce individual hostility against the excluded minority. It is precisely at such institutions that New Jersey's legislation is aimed, in order to further its purposes of reducing discrimination and prejudice.

CONCLUSION

For these reasons, *amicus* urges the Court to affirm the decision below.

Respectfully submitted,

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99/ *Id.*